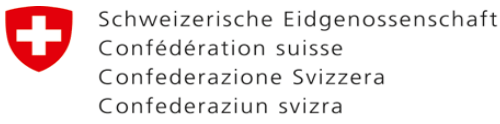


The legal framework for managing geological data

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Workshop “Data Management in Science”

May 22nd in Bern



Swiss Confederation

Federal Office of Topography swisstopo
www.swisstopo.ch

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Agenda

1. Introduction
2. Rights to data
 - Property law (ownership, ...)
 - Intellectual property rights
 - Privacy
 - Business secrets
3. Access to state owned data
 - Principle of transparency
 - Legislation on geo data
 - Registers on geological data
4. Swiss research law

Focus of my presentation

- ▶ **Geological data in the narrower sense**
 - not all objects underground (no man made objects)
 - not geo data in general
 - Geological data are different in some way.
- ▶ **Swiss law**
 - Intellectual property rights in the Anglo-American sphere are different!
 - The Legislation on data underground is mostly national.
- ▶ **No (or not much on) contract law**

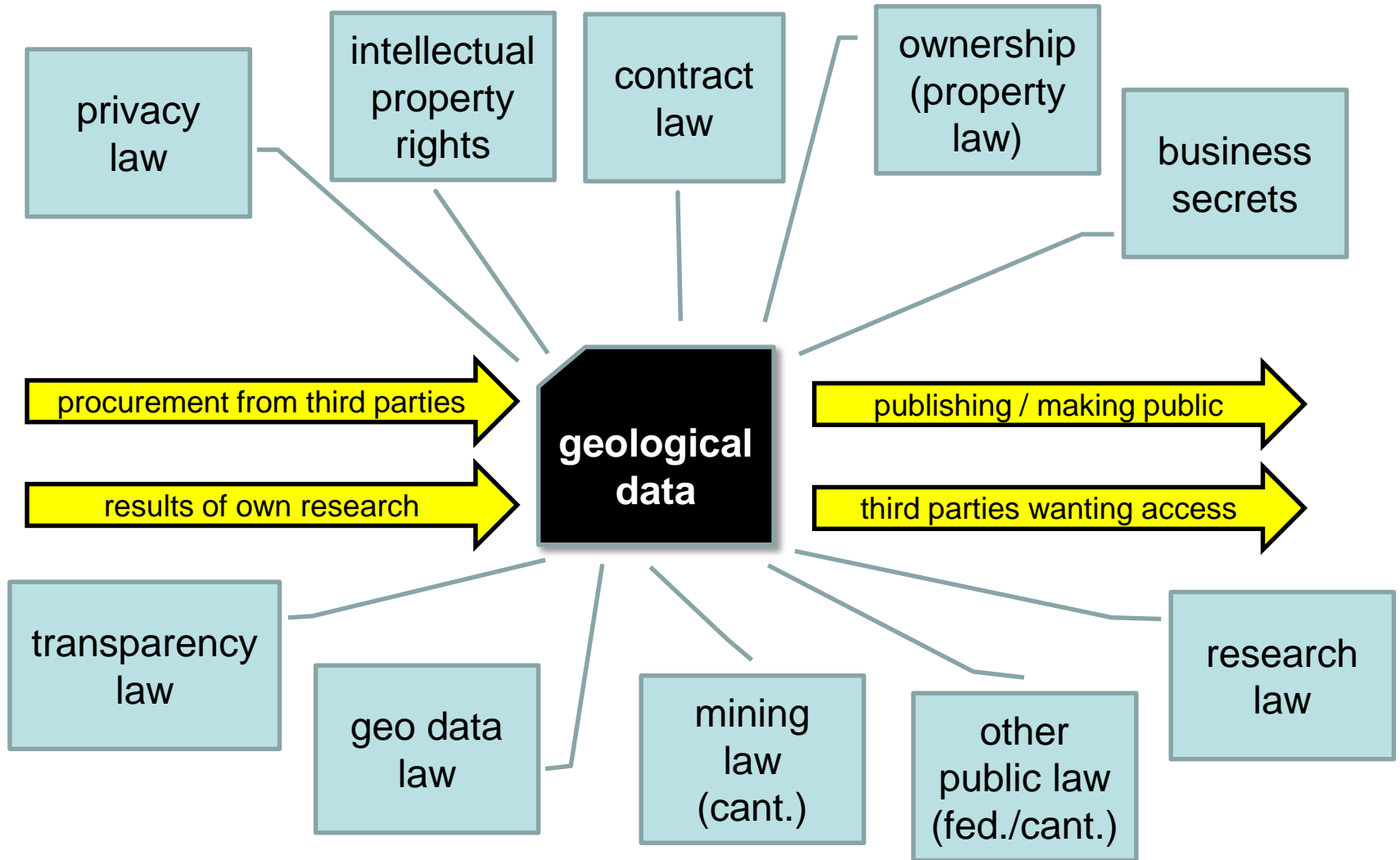
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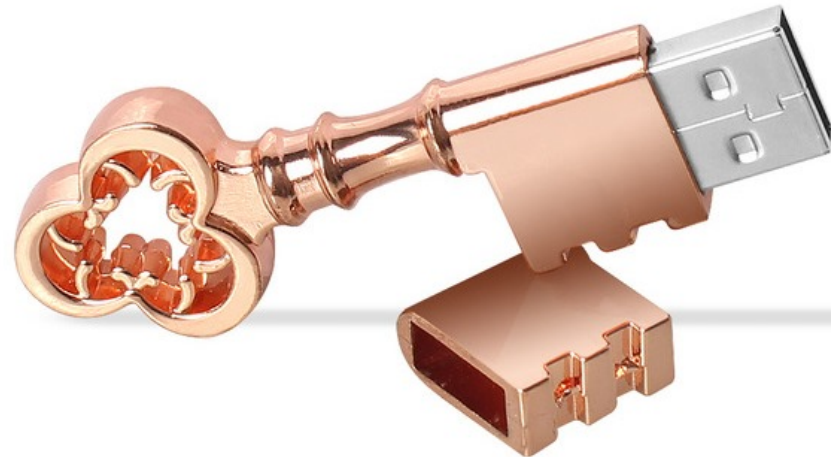
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Legal framework on geological data



No ownership on data

- ▶ Data are not physical, are no objects.
- ▶ No ownership on data:
 - There is no ownership on data in the sense of property law according to the Swiss Civil Code.
 - Data domination is based on the simple fact, the data are under your control.
 - Data domination is no right but is restricted by civil rights and public law.



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No database protection

- ▶ Directive 96/9/EC on legal protection of database not valid in Switzerland.
- ▶ No protection of database in Switzerland.

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Official Journal of the European Communities

27. 3. 96

**DIRECTIVE 96/9/EC OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

of 11 March 1996

on the legal protection of databases

Intellectual property rights (1)

- ▶ No intellectual property rights on raw data (e.g. borehole data, seismic data, gravimetric data).
- ▶ Intellectual property rights:
 - Processed geological data, if the procedure of processing is not automated or is not a well known common standard-procedure (need of individual intellectual work by proceeding the data).
 - Interpretations of geological data.

Intellectual property rights (2)

► Recognition of authorship:

- The author has the exclusive right to his own work and the right to recognition of his authorship (Art. 9 Copyright Act, CopA).
- Right to be named when there are quotations (Art. 25 CopA).

► Principal of exhaustion (Art. 12 CopA):

- Where the author has transferred the rights to a copy of a work or has consented to such a transfer, these rights may subsequently be further transferred or the copy otherwise distributed.
- Once open data – always open data.

Privacy

- ▶ Geological data in general are factual or technical data.
- ▶ Geological data in some cases may be personal data and fall under privacy law:
 - Names of authors of the research, the data originate: privacy vs. right to be named.
 - Name of the landowner: is public according to the law on the land register (Art. 970 Civil Code).
- ▶ As a general rule you may ignore privacy matters when treating geological data.

Business or manufacturing secrets

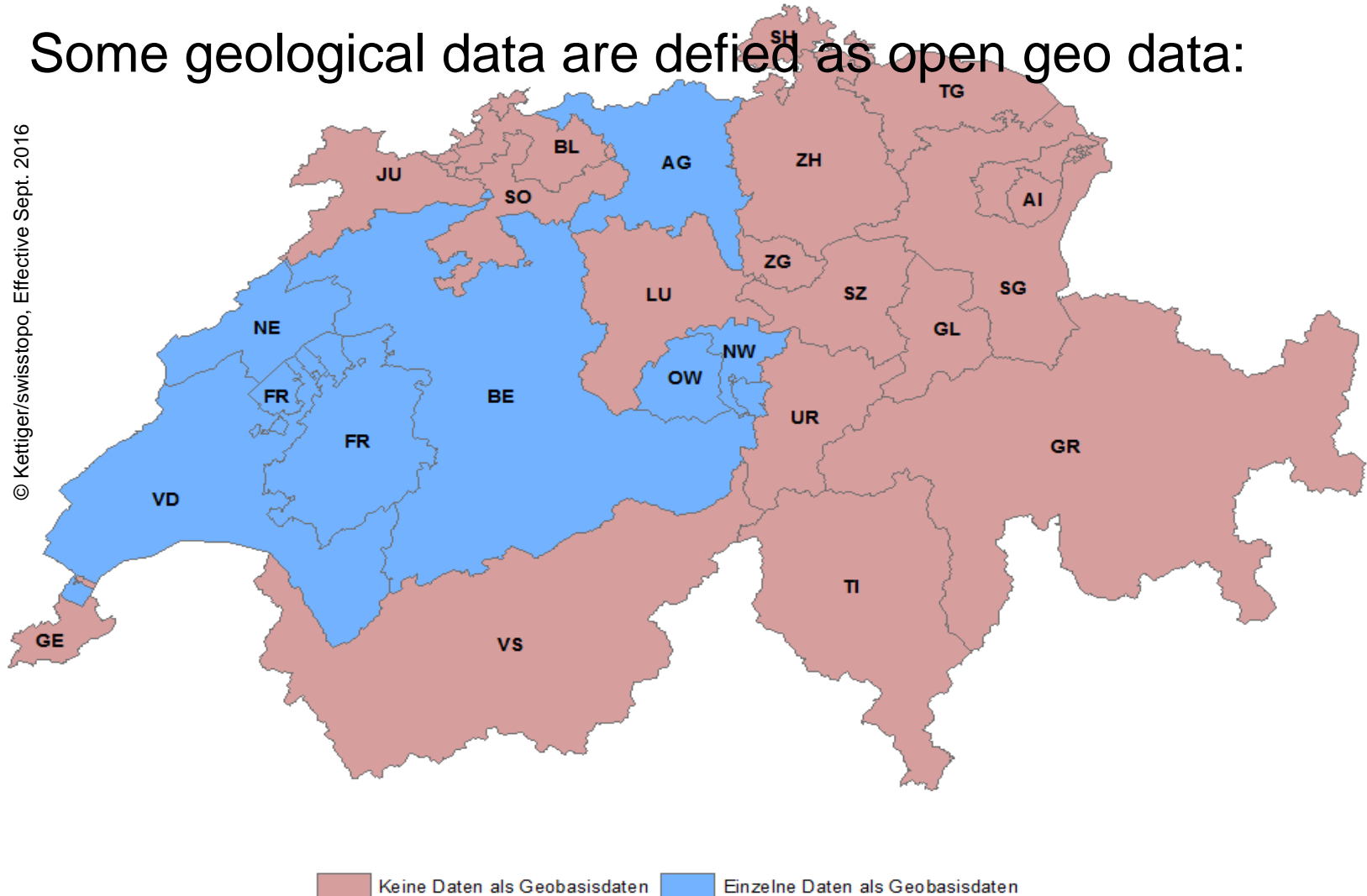
- ▶ Is an international and ubiquitous principle of law, hindering the free access to data.
- ▶ Applied on geological data:
 - Borehole data for geothermal probes: no business or manufacturing secret.
 - Borehole data or seismic data for search of mineral resources: business or manufacturing secret, until the licensing for/beginning of exploitation or according to cantonal right.

Access by transparency law

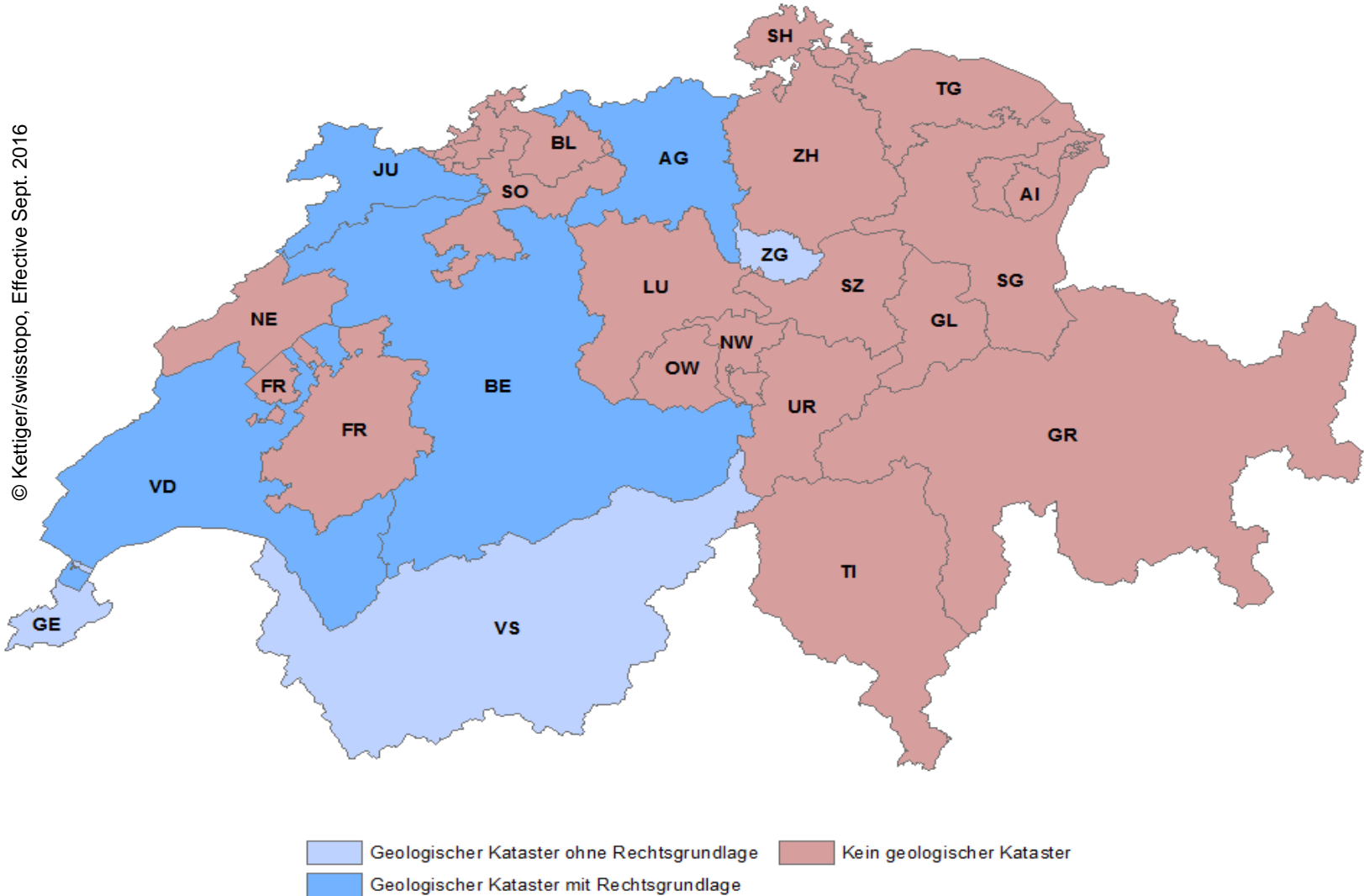
- ▶ Principle of transparency of environmental information by the Aarhus Convention and by Art. 10g Swiss Environmental Protection Act.
- ▶ Geological data are environmental information.
- ▶ No access in case geological data:
 - are subject to business or manufacturing secrets;
 - were provided voluntarily by a third party to an authority which undertook to maintain secrecy with regard thereto.

Geological data as state owned geo data

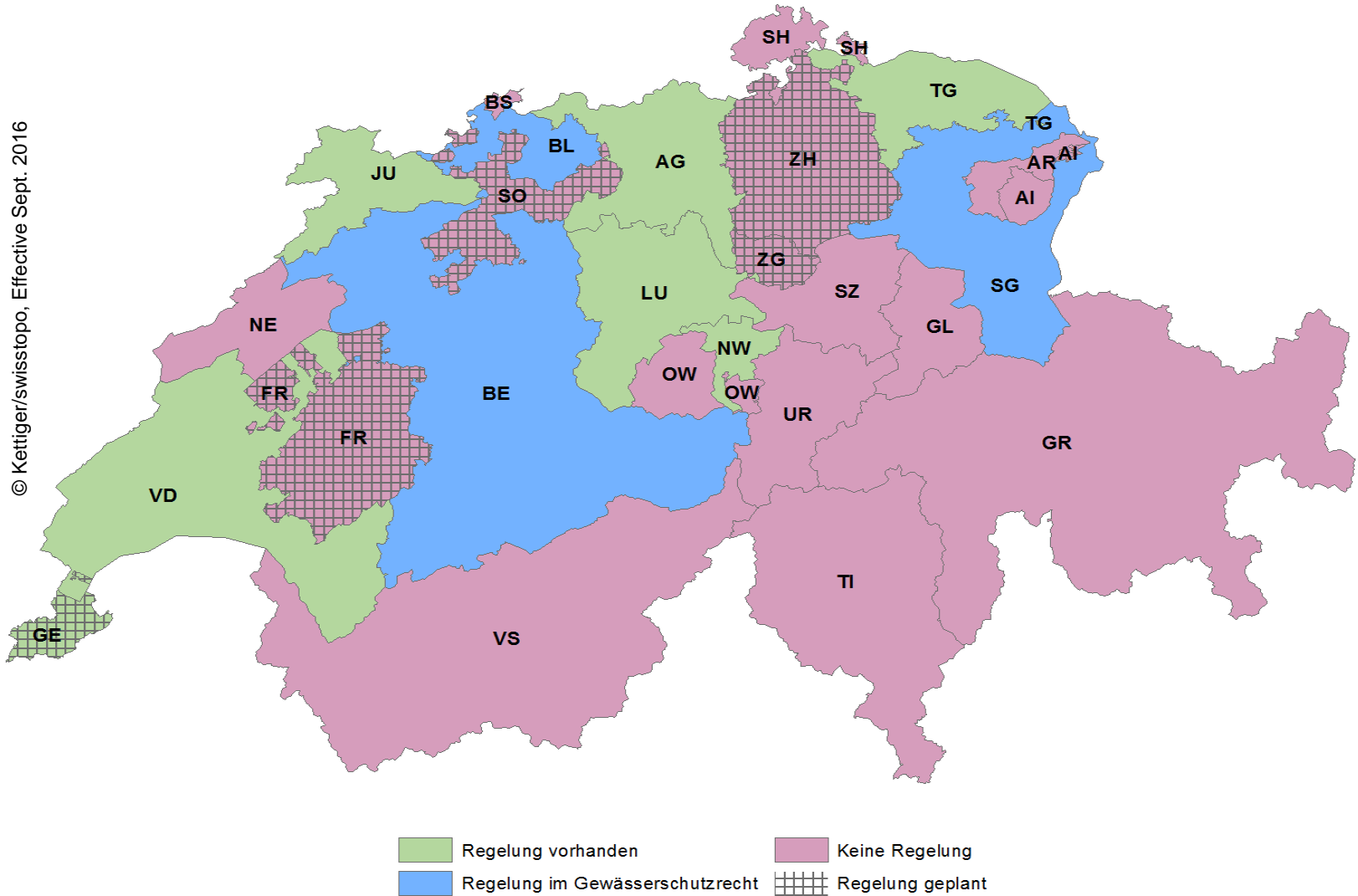
Some geological data are defined as open geo data:



Registers on geological data



Rules in cantonal mining laws



Research law (1)

- ▶ **Art. 50 Federal Act on the Promotion of Research and Innovation (RIPA):**
 - The research funding institutions, Innosuisse and the Federal Administration shall ensure that the results of research are available to the public in accordance with the legal provisions.

- ▶ **Art. 27 RIPA:**
 - The Federal Council may make federal funding for higher education research centres contingent on higher education research centres developing a strategy for their research and innovation activities on the exploitation of knowledge and the knowledge and technology transfer between higher education institutions and the private sector.

Research law (2)

- ▶ **SNFS – open access to publications:**
 - SNSF grantees are in principle required to publish the results of their research in Open Access publications.
- ▶ **SNFS expects all its funded researchers :**
 - to store the research data they have worked on and produced during the course of their research work,
 - to share these data with other researchers, unless they are bound by legal, ethical, copyright, confidentiality or other clauses, and
 - to deposit their data and metadata onto existing public repositories in formats that anyone can find, access and reuse without restriction.

Lesson to learn ...

- ☛ Legal aspects must be part of the concept of data management of a research project.
- ☛ This might lead to measures such as
 - separate storage of data according to legal status
 - marking all data sets with an attribute on legal status
 - supporting and facilitating the data management by appropriate contracts (when legally possible)

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"Before I write my name on the board, I'll need to know how you're planning to use that data."